

Introduced by Senator Speier

February 20, 2004

An act to amend ~~Section 296~~ *Sections 296, 296.1, 298.1, 299.5, and 300* of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

SB 1737, as amended, Speier. DNA collection.

Under existing law, specified felony offenders, *felony* sex offenders, and persons convicted of terrorist activity are required to provide blood and saliva samples along with their prints for ~~a law enforcement identification analysis to be included in the~~ state DNA database. *It is a crime for convicted offenders to fail or refuse to provide any samples, specimens, or prints.*

This bill would revise the provision to require buccal swab samples instead of saliva samples to be provided by convicted persons. The bill would impose the requirement to provide these identification samples, specimens, and prints on all, rather than just some, persons convicted of a felony and on all persons convicted of an offense requiring registration as a sex offender. The bill would exempt specified nonviolent drug possession offenders from having to provide these identification samples, specimens, and prints for the state DNA database. By revising the scope of application of existing crimes and by expanding collection requirements applicable to local officials, this bill would impose a state-mandated local program upon local governments.

This bill would make ~~a~~ technical, nonsubstantive ~~change~~ changes to these provisions and would make conforming changes to related provisions.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 296 of the Penal Code is amended to
2 read:

3 296. (a) (1) ~~Any~~-(A) *Except as provided in subparagraph*
4 *(B), any person who is convicted of any of the following crimes*
5 *felony or any offense that imposes upon a person the duty to*
6 *register in California as a sex offender under Section 290, or is*
7 *found not guilty by reason of insanity of any of the following*
8 *crimes felony or any offense that imposes upon a person the duty*
9 *to register in California as a sex offender under Section 290, shall,*
10 *regardless of sentence imposed or disposition rendered, be*
11 *required to provide buccal swab samples or two specimens of*
12 *blood, a saliva sample, right thumbprints, and a full palm print*
13 *impression of each hand for law enforcement identification*
14 *analysis:*

15 ~~(A) Any offense or attempt to commit any felony offense~~
16 ~~described in Section 290, or any felony offense that imposes upon~~
17 ~~a person the duty to register in California as a sex offender under~~
18 ~~Section 290.~~

19 ~~(B) Murder in violation of Section 187, 190, 190.05, or any~~
20 ~~degree of murder as set forth in Chapter 1 (commencing with~~
21 ~~Section 187) of Title 8 of Part 1 of the Penal Code, or an attempt~~
22 ~~to commit murder.~~

1 ~~(C) Voluntary manslaughter in violation of Section 192 or an~~
2 ~~attempt to commit voluntary manslaughter.~~

3 ~~(D) Felony spousal abuse in violation of Section 273.5.~~

4 ~~(E) Aggravated sexual assault of a child in violation of Section~~
5 ~~269.~~

6 ~~(F) A felony offense of assault or battery in violation of Section~~
7 ~~217.1, 220, 241.1, 243, 243.1, 243.3, 243.4, 243.7, 244, 245,~~
8 ~~245.2, 245.3, or 245.5.~~

9 ~~(G) Kidnapping in violation of subdivisions (a) to (e),~~
10 ~~inclusive, of Section 207, or Section 208, 209, 209.5, or 210, or an~~
11 ~~attempt to commit any of these offenses.~~

12 ~~(H) Mayhem in violation of Section 203 or aggravated~~
13 ~~mayhem in violation of Section 205, or an attempt to commit either~~
14 ~~of these offenses.~~

15 ~~(I) Torture in violation of Section 206 or an attempt to commit~~
16 ~~torture.~~

17 ~~(J) Burglary as defined in subdivision (a) of Section 460 or an~~
18 ~~attempt to commit this offense.~~

19 ~~(K) Robbery as defined in subdivision (a) or (b) of Section~~
20 ~~212.5 or an attempt to commit either of these offenses.~~

21 ~~(L) Arson in violation of subdivision (a) or (b) of Section 451~~
22 ~~or an attempt to commit either of these offenses.~~

23 ~~(M) Carjacking in violation of Section 215 or an attempt to~~
24 ~~commit this offense.~~

25 ~~(N) Terrorist activity in violation of Section 11418 or 11419, or~~
26 ~~a felony violation of Section 11418.5, or an attempt to commit any~~
27 ~~of these offenses.~~

28 *(B) Subparagraph (A) shall not apply to a person convicted of*
29 *a nonviolent drug possession offense requiring probation and*
30 *treatment pursuant to Section 1210.1.*

31 (2) Any person who is required to register under Section 290
32 because of the commission of, or the attempt to commit, a felony
33 any offense specified in Section 290, and who is committed to any
34 institution under the jurisdiction of the Department of the Youth
35 Authority where he or she was confined, or is granted probation,
36 or is or was committed to a state hospital as a mentally disordered
37 sex offender under Article 1 (commencing with Section 6300) of
38 Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions
39 Code, shall be required to provide two specimens of blood, a saliva
40 sample, right thumbprints, and a full palm print impression of each

1 hand to that institution or, in the case of a person granted probation,
2 to a person and at a location within the county designated for
3 testing.

4 (b) The provisions of this chapter and its requirements for
5 submission to testing as soon as administratively practicable to
6 provide specimens, samples, and print impressions as described in
7 subdivision (a) shall apply regardless of placement or confinement
8 in any mental hospital or other public or private treatment facility,
9 and shall include, but not be limited to, the following persons,
10 including juveniles:

11 (1) Any person committed to a state hospital or other treatment
12 facility as a mentally disordered sex offender under Article 1
13 (commencing with Section 6300) of Chapter 2 of Part 2 of
14 Division 6 of the Welfare and Institutions Code.

15 (2) Any person who has a severe mental disorder as set forth
16 within the provisions of Article 4 (commencing with Section
17 2960) of Chapter 7 of Title 1 of Part 3 of the Penal Code.

18 (3) Any person found to be a sexually violent predator pursuant
19 to Article 4 (commencing with Section 6600) of Chapter 2 of Part
20 2 of Division 6 of the Welfare and Institutions Code.

21 (c) The provisions of this chapter are mandatory and apply
22 whether or not the court advises a person, including any juvenile,
23 that he or she must provide the databank and database specimens,
24 samples, and print impressions as a condition of probation, parole,
25 or any plea of guilty, no contest, or not guilty by reason of insanity,
26 to any of the offenses described in subdivision (a).

27 (d) At sentencing or disposition, the prosecuting attorney shall
28 verify in writing that the requisite samples are required by law, and
29 that they have been taken, or are scheduled to be taken before the
30 offender is released on probation, or other scheduled release.
31 However, a failure by the prosecuting attorney or any other law
32 enforcement agency to verify sample requirement or collection
33 shall not relieve a person of the requirement to provide samples.

34 (e) The abstract of judgment issued by the court shall indicate
35 that the court has ordered the person to comply with the
36 requirements of this chapter and that the person shall be included
37 in the state's DNA and Forensic Identification ~~Data Base and Data~~
38 ~~Bank Database and Databank~~ program and be subject to this
39 chapter. However, failure by the court to enter these facts in the
40 abstract of judgment shall not invalidate a plea, conviction, or

disposition, or otherwise relieve a person from the requirements of this chapter.

SEC. 2. Section 296.1 of the Penal Code is amended to read:

296.1. (a) Any person, including any juvenile, who comes within the provisions of this chapter for an offense set forth in subdivision (a) of Section 296, and who is granted probation, or serves his or her entire term of confinement in a county jail, or is not sentenced to a term of confinement in a state prison facility, or otherwise bypasses a prison inmate reception center maintained by the Department of Corrections, shall, as soon as administratively practicable, but in any case, prior to physical release from custody, be required to provide *buccal swab samples or* two specimens of blood, ~~a saliva sample,~~ and thumb and palm print impressions as set forth in subdivision (a) of Section 296, at a county jail facility or other state, local, or private facility designated for the collection of these specimens, samples, and print impressions, in accordance with subdivision (f) of Section 295.

If the person subject to this chapter is not incarcerated at the time of sentencing, the court shall order the person to report within five calendar days to a county jail facility or other state, local, or private facility designated for the collection of specimens, samples, and print impressions to provide these specimens, samples, and print impressions in accordance with subdivision (f) of Section 295.

(b) If a person who comes within the provisions of this chapter for an offense set forth in subdivision (a) of Section 296 is sentenced to serve a term of imprisonment in a state correctional institution, the Director of Corrections shall collect the *buccal swab samples or* blood specimens, ~~saliva samples,~~ and thumb and palm print impressions required by this chapter from the person during the intake process at the reception center designated by the director, or as soon as administratively practicable thereafter at a receiving penal institution.

(c) Any person, including, but not limited to, any juvenile and any person convicted and sentenced to death, life without the possibility of parole, or any life or indeterminate term, who is imprisoned or confined in a state correctional institution, a county jail, a facility within the jurisdiction of the Department of the Youth Authority, or any other state, local, or private facility after a conviction of any crime, or disposition rendered in the case of a juvenile, whether or not that crime or offense is one set forth in

subdivision (a) of Section 296, shall provide *buccal swab samples* or two specimens of blood, ~~a saliva sample~~, and thumb and palm print impressions pursuant to this chapter, as soon as administratively practicable once it has been determined that both of the following apply:

(1) The person has been convicted or adjudicated a ward of the court in California of a qualifying offense described in subdivision (a) of Section 296 or has been convicted or had a disposition rendered in any other court, including any state, federal, or military court, of any offense that, if committed or attempted in this state, would have been punishable as an offense described in subdivision (a) of Section 296.

(2) The person's *buccal swab samples* or blood specimens, ~~saliva samples~~, and thumb and palm print impressions authorized by this chapter are not in the possession of the Department of Justice DNA Laboratory as part of the DNA data bank program.

This subdivision applies regardless of when the person was convicted of the qualifying offense described in subdivision (a) of Section 296 or a similar crime under the laws of the United States or any other state, or when disposition was rendered in the case of a juvenile who is adjudged a ward of the court for commission of a qualifying offense described in subdivision (a) of Section 296 or a similar crime under the laws of the United States or any other state.

(d) Any person, including any juvenile, who comes within the provisions of this chapter for an offense set forth in subdivision (a) of Section 296, and who is on probation or parole, shall be required to provide *buccal swab samples* or two specimens of blood, ~~a saliva sample~~, and thumb and palm print impressions as required pursuant to this chapter, if it is determined that the person has not previously provided these specimens, samples, and print impressions to law enforcement, or if it is determined that these specimens, samples, and print impressions are not in the possession of the Department of Justice. The person shall have the specimens, samples, and print impressions collected within five calendar days of being notified by a law enforcement agency or other agency authorized by the Department of Justice. The specimens, samples, and print impressions shall be collected in accordance with subdivision (f) of Section 295 at a county jail

1 facility or other state, local, or private facility designated for this
2 collection.

3 This subdivision shall apply regardless of when the crime
4 committed became a qualifying offense pursuant to this chapter.

5 (e) When an offender from another state is accepted into this
6 state under any of the interstate compacts described in Article 3
7 (commencing with Section 11175) or Article 4 (commencing with
8 Section 1189) of Chapter 2 of Title 1 of Part 4 of this code, or
9 Chapter 4 (commencing with Section 1300) of Part 1 of Division
10 2 of the Welfare and Institutions Code, or under any other
11 reciprocal agreement with any county, state, or federal agency, or
12 any other provision of law, whether or not the offender is confined
13 or released, the acceptance is conditional on the offender
14 providing *buccal swab samples or* blood specimens, ~~saliva~~
15 ~~samples~~, and palm and thumb print impressions pursuant to this
16 chapter, if the offender was convicted of an offense which would
17 qualify as a crime described in subdivision (a) of Section 296, or
18 if the person was convicted of a similar crime under the laws of the
19 United States or any other state.

20 If the person is not confined, the specimens, samples, and print
21 impressions required by this chapter must be provided within five
22 calendar days after the offender reports to the supervising agent or
23 within five calendar days of notice to the offender, whichever
24 occurs first. The person shall report to a county jail facility in the
25 county where he or she resides or temporarily is located to have the
26 specimens, samples, and print impressions collected pursuant to
27 this chapter. The specimens, samples, and print impressions shall
28 be collected in accordance with subdivision (f) of Section 295.

29 If the person is confined, he or she shall provide the *buccal swab*
30 *samples or* blood specimens, ~~saliva samples~~, and thumb and palm
31 print impressions required by this chapter as soon as practicable
32 after his or her receipt in a state, county, local, private, or other
33 facility.

34 (f) Subject to the approval of the Director of the Federal Bureau
35 of Investigation, persons confined or incarcerated in a federal
36 prison or federal institution located in California who are
37 convicted of a qualifying offense described in subdivision (a) of
38 Section 296 or of a similar crime under the laws of the United
39 States or any other state that would constitute an offense described
40 in subdivision (a) of Section 296, are subject to this chapter and

1 shall provide *buccal swab samples or blood specimens*, ~~saliva~~
2 ~~samples~~, and thumb and palm print impressions pursuant to this
3 chapter if any of the following apply:

4 (1) The person committed a qualifying offense in California.

5 (2) The person was a resident of California at the time of the
6 qualifying offense.

7 (3) The person has any record of a California conviction for a
8 sex or violent offense described in subdivision (a) of Section 296,
9 regardless of when the crime was committed.

10 (4) The person will be released in California.

11 Once a federal data bank is established and accessible to the
12 Department of Justice, the Department of Justice DNA Laboratory
13 shall, upon the request of the United States Department of Justice,
14 forward the samples taken pursuant to this chapter, with the
15 exception of those taken from suspects pursuant to subdivision (b)
16 of Section 297, to the United States Department of Justice DNA
17 data bank laboratory. The samples and impressions required by
18 this chapter shall be taken in accordance with the procedures set
19 forth in subdivision (f) of Section 295.

20 (g) If a person who is released on parole, furlough, or other
21 release, is returned to a state correctional institution for a violation
22 of a condition of his or her parole, furlough, or other release, and
23 is serving or at any time has served a term of imprisonment for
24 committing an offense described in subdivision (a) of Section 296,
25 and he or she did not provide specimens, samples, and print
26 impressions pursuant to the state's DNA data bank program, the
27 person shall submit to collection of *buccal swab samples or blood*
28 ~~specimens, saliva samples~~, and thumb and palm print impressions
29 at a state correctional institution.

30 This subdivision applies regardless of the crime or Penal Code
31 violation for which a person is returned to a state correctional
32 institution and regardless of the date the qualifying offense was
33 committed.

34 *SEC. 3. Section 298.1 of the Penal Code is amended to read:*

35 298.1. (a) As of the effective date of this chapter, any person
36 who refuses to give any or all of the following, *buccal swab*
37 ~~samples or blood specimens, saliva samples~~, or thumb or palm
38 print impressions as required by this chapter, once he or she has
39 received written notice from the Department of Justice, the
40 Department of Corrections, any law enforcement personnel, or

officer of the court that he or she is required to provide specimens, samples, and print impressions pursuant to this chapter is guilty of a misdemeanor. The refusal or failure to give any or all of the following, a *buccal swab sample or* blood specimen, ~~saliva sample~~, or thumb or palm print impression is punishable as a separate offense by both a fine of five hundred dollars (\$500) and imprisonment of up to one year in a county jail, or if the person is already imprisoned in the state prison, by sanctions for misdemeanors according to a schedule determined by the Department of Corrections.

(b) (1) Notwithstanding subdivision (a), authorized law enforcement, custodial, or corrections personnel, including peace officers as defined in Sections 830, 830.1, 830.5, and 830.55, or subdivision (d) of Section 830.2, may employ reasonable force to collect *buccal swab samples or* blood specimens, ~~saliva samples~~, or thumb or palm print impressions pursuant to this chapter from individuals who, after written or oral request, refuse to provide those specimens, samples, or thumb or palm print impressions.

(2) The withdrawal of blood shall be performed in a medically approved manner in accordance with the requirements of paragraph (2) of subdivision (b) of Section 298.

(3) The use of reasonable force as provided in this subdivision shall be carried out in a manner consistent with regulations and guidelines adopted pursuant to subdivision (c).

(c) (1) The Department of Corrections and the Department of the Youth Authority shall adopt regulations governing the use of reasonable force as provided in subdivision (b), which shall include the following:

(A) The term “use of reasonable force” shall be defined as the force that an objective, trained and competent correctional employee, faced with similar facts and circumstances, would consider necessary and reasonable to gain compliance with this chapter.

(B) The use of reasonable force shall not be authorized without the prior written authorization of the supervising officer on duty. The authorization shall include information that reflects the fact that the offender was asked to provide the requisite specimen, sample, or impression and refused.

(C) The use of reasonable force shall be preceded by efforts to secure voluntary compliance with this section.

1 (D) If the use of reasonable force includes a cell extraction, the
2 regulations shall provide that the extraction be videotaped.

3 (2) The Board of Corrections shall adopt guidelines governing
4 the use of reasonable force as provided in subdivision (b) for local
5 detention facilities, which shall include the following:

6 (A) The term “use of reasonable force” shall be defined as the
7 force that an objective, trained and competent correctional
8 employee, faced with similar facts and circumstances, would
9 consider necessary and reasonable to gain compliance with this
10 chapter.

11 (B) The use of reasonable force shall not be authorized without
12 the prior written authorization of the supervising officer on duty.
13 The authorization shall include information that reflects the fact
14 that the offender was asked to provide the requisite specimen,
15 sample, or impression and refused.

16 (C) The use of reasonable force shall be preceded by efforts to
17 secure voluntary compliance with this section.

18 (D) If the use of reasonable force includes a cell extraction, the
19 extraction shall be videotaped.

20 (3) The Department of Corrections, the Department of the
21 Youth Authority, and the Board of Corrections shall report to the
22 Legislature not later than January 1, 2005, on the use of reasonable
23 force pursuant to this section. The report shall include, but is not
24 limited to, the number of refusals, the number of incidents of the
25 use of reasonable force under this section, the type of force used,
26 the efforts undertaken to obtain voluntary compliance, if any, and
27 whether any medical attention was needed by the prisoner or
28 personnel as a result of force being used.

29 *SEC. 4. Section 299.5 of the Penal Code is amended to read:*

30 299.5. (a) All DNA and forensic identification profiles and
31 other identification information retained by the Department of
32 Justice pursuant to this chapter are exempt from any law requiring
33 disclosure of information to the public and shall be confidential
34 except as otherwise provided in this chapter.

35 (b) All evidence and forensic samples containing biological
36 material retained by the Department of Justice DNA Laboratory
37 or other state law enforcement agency are exempt from any law
38 requiring disclosure of information to the public or the return of
39 biological specimens.

(c) Non-DNA forensic identification information may be filed with the offender's file maintained by the Sex Registration Unit of the Department of Justice or in other computerized data bank systems maintained by the Department of Justice.

(d) The DNA and other forensic identification information retained by the Department of Justice pursuant to this chapter shall not be included in the state summary criminal history information. However, nothing in this chapter precludes law enforcement personnel from entering into a person's criminal history information or offender file maintained by the Department of Justice, the fact that the specimens, samples, and print impressions required by this chapter have or have not been collected from that person.

(e) The fact that the *buccal swab samples* or blood specimens, ~~saliva samples~~, and print impressions required by this chapter have been received by the DNA Laboratory of the Department of Justice shall be included in the state summary criminal history information.

The full palm prints of each hand shall be filed and maintained by the Automated Latent Print Section of the Bureau of Criminal Identification and Information of the Department of Justice, and may be included in the state summary criminal history information.

(f) DNA and other forensic identification information shall be released only to law enforcement agencies, including, but not limited to, parole officers of the Department of Corrections, hearing officers of the parole authority, probation officers, the Attorney General's office, district attorneys' offices, and prosecuting city attorneys' offices, or to a court or administrative tribunal, except as specified in this chapter. Dissemination of this information to law enforcement agencies and district attorneys' offices outside this state shall be performed in conformity with the provisions of this chapter. A defendant's DNA and other forensic identification information developed pursuant to this chapter shall be available to his or her defense counsel upon court order made pursuant to Chapter 10 (commencing with Section 1054) of Title 6 of Part 2.

(g) (1) (A) Any person who knowingly uses an offender sample or DNA profile for other than criminal identification or exclusion purposes, or who knowingly discloses DNA or other

1 forensic identification information developed pursuant to this
2 section to an unauthorized individual or agency, for other than
3 criminal identification or exclusion purposes, in violation of this
4 chapter, shall be punished by imprisonment in a county jail not
5 exceeding one year or by imprisonment in the state prison.

6 (B) Any person who, for the purpose of financial gain,
7 knowingly uses an offender sample or DNA profile for other than
8 criminal identification or exclusion purposes or who, for the
9 purpose of financial gain, knowingly discloses DNA or other
10 forensic identification information developed pursuant to this
11 section to an unauthorized individual or agency, for other than
12 criminal identification or exclusion purposes, in violation of this
13 chapter, shall, in addition to the penalty provided in subparagraph
14 (A), be punished by a criminal fine in an amount three times that
15 of any financial gain received or ten thousand dollars (\$10,000),
16 whichever is greater.

17 (2) (A) If any employee of the Department of Justice
18 knowingly uses an offender sample or DNA profile for other than
19 criminal identification or exclusion purposes, or knowingly
20 discloses DNA or other forensic identification information
21 developed pursuant to this section to an unauthorized individual
22 or agency, for other than criminal identification or exclusion
23 purposes, in violation of this chapter, the department shall be liable
24 in civil damages to the donor of the DNA identification
25 information in the amount of five thousand dollars (\$5,000) for
26 each violation, plus attorney's fees and costs. In the event of
27 multiple disclosures, the total damages available to the donor of
28 the DNA is limited to fifty thousand dollars (\$50,000) plus
29 attorney's fees and costs.

30 (B) (i) Notwithstanding any other law, this shall be the sole
31 and exclusive remedy against the Department of Justice and its
32 employees available to the donor of the DNA.

33 (ii) The Department of Justice employee disclosing DNA
34 identification information in violation of this chapter shall be
35 absolutely immune from civil liability under this or any other law.

36 (3) It is not a violation of this section for a law enforcement
37 agency to publicly disclose the fact of a DNA profile match.

38 (h) It is not a violation of this chapter to furnish DNA or other
39 forensic identification information of the defendant to his or her

1 defense counsel for criminal defense purposes in compliance with
2 discovery.

3 (i) It is not a violation of this section to release DNA and other
4 forensic identification information developed pursuant to this
5 chapter to a jury or grand jury, or in a document filed with a court
6 or administrative agency, or as part of a judicial or administrative
7 proceeding, or for this information to become part of the public
8 transcript or record of proceedings.

9 (j) It is not a violation of this section to include information
10 obtained from a file in a transcript or record of a judicial
11 proceeding, or in any other public record when the inclusion of the
12 information in the public record is authorized by a court, statute,
13 or decisional law.

14 (k) It is not a violation of this section for the DNA Laboratory
15 of the Department of Justice or a local public laboratory to use
16 anonymous DNA records for training, research, statistical analysis
17 of populations, or quality control.

18 (l) It is not a violation of this section to disseminate statistical
19 or research information obtained from the offender's file, the
20 computerized databank system, any of the DNA laboratory's
21 databases, or the full palm print file, provided that the subject of
22 the file is not identified and cannot be identified from the
23 information disclosed. All requests for statistical or research
24 information obtained from the DNA databank shall be cataloged
25 by the Department of Justice. Commencing January 1, 2000, the
26 department shall submit an annual letter to the Legislature
27 including, with respect to each request, the requester's name or
28 agency, the purpose of the request, whether the request is related
29 to a criminal investigation or court proceeding, whether the
30 request was granted or denied, any reasons for denial, costs
31 incurred or estimates of the cost of the request, and the date of the
32 request.

33 (m) The Department of Justice shall make public the
34 methodology and procedures to be used in its DNA program prior
35 to the commencement of DNA testing in its laboratories. The
36 Department of Justice shall review and consider on an ongoing
37 basis the findings and results of any peer review and validation
38 studies submitted to the department by members of the relevant
39 scientific community experienced in the use of DNA technology.
40 This material shall be available to criminal defense counsel upon

1 court order made pursuant to Chapter 10 (commencing with
2 Section 1054) of Title 6 of Part 2.

3 (n) In order to maintain the computer system security of the
4 Department of Justice DNA and forensic identification database
5 and databank program, the computer software and database
6 structures used by the DNA Laboratory of the Department of
7 Justice to implement this chapter are confidential.

8 (o) Nothing in this section shall preclude a court from ordering
9 discovery pursuant to Chapter 10 (commencing with Section
10 1054) of Title 6 of Part 2.

11 *SEC. 5. Section 300 of the Penal Code is amended to read:*

12 300. Nothing in this chapter shall limit or abrogate any
13 existing authority of law enforcement officers to take, maintain,
14 store, and utilize DNA or forensic identification markers, *buccal*
15 *swab samples or blood specimens, ~~saliva samples,~~* or thumb or
16 palm print impressions for identification purposes.

17 *SEC. 6. No reimbursement is required by this act pursuant to*
18 *Section 6 of Article XIII B of the California Constitution for*
19 *certain costs that may be incurred by a local agency or school*
20 *district because in that regard this act creates a new crime or*
21 *infraction, eliminates a crime or infraction, or changes the penalty*
22 *for a crime or infraction, within the meaning of Section 17556 of*
23 *the Government Code, or changes the definition of a crime within*
24 *the meaning of Section 6 of Article XIII B of the California*
25 *Constitution.*

26 *However, notwithstanding Section 17610 of the Government*
27 *Code, if the Commission on State Mandates determines that this*
28 *act contains other costs mandated by the state, reimbursement to*
29 *local agencies and school districts for those costs shall be made*
30 *pursuant to Part 7 (commencing with Section 17500) of Division*
31 *4 of Title 2 of the Government Code. If the statewide cost of the*
32 *claim for reimbursement does not exceed one million dollars*
33 *(\$1,000,000), reimbursement shall be made from the State*
34 *Mandates Claims Fund.*

